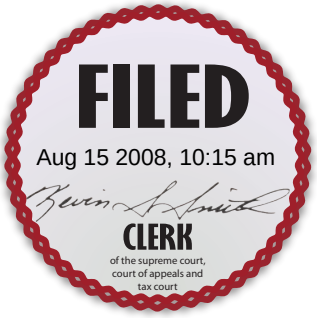

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IN THE
COURT OF APPEALS OF INDIANA

RANDALL PIKE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0801-CR-26
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol J, Orbison, Judge
The Honorable Amy Barbar, Magistrate
Cause No. 49G22-0708-FB-175596

August 15. 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Randall Pike ("Pike") pleaded guilty in Marion Superior Court to Class B felony burglary and Class D felony auto theft and was sentenced to an aggregate term of twelve years incarceration. Pike appeals and claims (1) that the trial court erred by failing to consider certain alleged mitigating factors, and (2) that his sentence is inappropriate. We affirm.

Facts and Procedural History

On the evening of August 25, 2007, Dora Miller and her family were at their home in Indianapolis. While Ms. Miller was outside in her back yard, she heard her van "chirp," which indicated that someone was using her key. When Ms. Miller ran to her front yard, she saw Pike speed away in her van. Ms. Miller had left her van key on a table inside her home; therefore, Pike had entered the home to steal the key. Ms. Miller followed Pike in her truck while talking to the police on her mobile phone. Pike fled at a high speed, but Ms. Miller pursued Pike until she blocked him at a dead-end street. Pike then left the car and fled on foot. The police arrived at the scene and eventually captured Pike, who resisted arrest.

On August 28, 2007, the State charged Pike with Class B felony burglary, Class D felony auto theft, Class D felony theft, and Class D felony battery on a police officer. On November 27, 2007, the parties entered into a plea agreement which called for Pike to plead guilty to Class B felony burglary and Class D felony auto theft. In return, the State agreed to dismiss the remaining charges and to not file an habitual offender enhancement. The agreement also left sentencing to the discretion of the trial court, but placed a cap of twelve years on the executed portion of the sentence.

On December 11, 2007, the trial court held a sentencing hearing, at which it found the following aggravating factors: (1) Pike had a history of criminal activity; (2) Pike was on probation or home detention at the time he committed the present offenses; (3) when given probation in the past, Pike had his probation revoked; and (4) the nature and circumstances of the present offenses. The trial court found that "the aggravating circumstances outweigh the mitigating circumstances" and sentenced Pike to twelve years on the burglary conviction and a concurrent sentence of three years on the auto theft conviction. Tr. p. 38. Pike now appeals.

I. Mitigating Circumstances

Pike first claims that the trial court erred in failing to find any mitigating circumstances. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of that discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified upon reh'g, 875 N.E.2d 218. A trial court may abuse its discretion by failing to issue a sentencing statement at all, or by issuing a sentencing statement that either bases a sentence on reasons that are not supported by the record, omits reasons both advanced for consideration and clearly supported by the record, or includes reasons that are improper as a matter of law. Id. at 490-91. Moreover, the finding of mitigating factors is not mandatory and rests within the discretion of the trial court, and the trial court is not obligated to accept the defendant's arguments as to what constitutes a mitigating factor. Page v. State, 878 N.E.2d 404, 408 (Ind. Ct. App. 2007), trans. denied.

The first mitigator which Pike now claims the trial court overlooked is the fact that he pleaded guilty. As explained by our supreme court in its opinion on rehearing in Anglemyer, a defendant who pleads guilty deserves "some" mitigating weight to be given to the plea in return. 875 N.E.2d at 220. However, "an allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is not only supported by the record but also that the mitigating evidence is *significant*." Id. at 220-21 (emphasis added). The significance of a guilty plea as a mitigating factor varies from case to case. Id. at 221. A guilty plea may not be significantly mitigating when it either fails to demonstrate the defendant's acceptance of responsibility, or when the defendant receives a substantial benefit in return for the plea. Id.

Here, Pike was facing one Class B felony charge and three Class D felony charges in addition to an habitual offender enhancement. In exchange for his plea, the State agreed to drop two Class D felony charges and not file the habitual offender enhancement. This by itself was a substantial benefit received by Pike in exchange for his plea. Moreover, the evidence against Pike was substantial. He was witnessed stealing a van and was chased down by the van's owner until he abandoned the vehicle and fled on foot. Thus, Pike's decision to plead guilty was more likely the result of pragmatism than him simply accepting responsibility for his actions. In short, Pike has not demonstrated that his guilty plea was a significant mitigating circumstance. Therefore, the trial court did not abuse its discretion by omitting reference to the plea when it imposed sentence. See id. (holding that trial court did not abuse discretion in

failing to mention defendant's guilty plea as a mitigating factor where evidence of defendant's guilt was substantial and where State agreed to drop several charges against defendant, thereby providing defendant a substantial benefit).

In a related argument, Pike claims that the trial court should have considered as mitigating the fact that he did not contest the restitution sought by the victims. Pike does not explain why this should be considered as mitigating, especially in light of the fact that the evidence against him was substantial. His decision not to contest the restitution sought, like his decision to plead guilty, was likely a pragmatic decision. As such we cannot say that this alleged mitigating factor was either significant or clearly supported by the record.

Pike also argues that the trial court failed to consider his problem with alcohol abuse as a mitigating factor. Although Pike may well have an alcohol problem, he does not explain why the trial court should have considered this as mitigating. The State argues that Pike has done little to seek treatment for his alcohol problem. The presentence investigation report indicates that Pike claimed to have attended outpatient treatment in 1993 and 1997 and also to have received some treatment while incarcerated. The State does not directly deny this, but claims that Pike had not sought treatment since the 1990s. The State even argues that the trial court could have rightly considered this as an aggravating factor. See Bryant v. State, 802 N.E.2d 486, 501 (Ind. Ct. App. 2004) (trial court did not err in finding substance abuse as an aggravating factor where defendant was aware of his problem with drugs and alcohol yet did not take any positive steps to treat his addiction); Bennet v. State, 787 N.E.2d 938, 948 (Ind. Ct. App. 2003)

(trial court did not err in failing to find defendant's alcohol abuse problem as mitigating, and could properly have considered such as aggravating, where defendant was aware of problem yet never sought help).

Here, Pike sought some treatment in the past, but this treatment was obviously unsuccessful. Moreover, Pike had not sought treatment within the last few years prior to his commission of the instant crimes. Even if Pike's untreated alcohol problem does not rise to the level of an aggravating factor, we certainly cannot say that it was a significant mitigating factor which was clearly supported by the record. Therefore, the trial court did not abuse its discretion in failing to consider Pike's alcohol problem as a mitigating factor. In short, the trial court did not err in failing to identify mitigating factors.

II. Appropriateness of Sentence

Pike next claims that his sentence is inappropriate. Pursuant to Indiana Appellate Rule 7(B), we have the authority to revise a sentence if, after due consideration of the trial court's decision, we conclude that the sentence is inappropriate in light of the nature of the offense and character of the offender. The defendant bears the burden of persuading us that his or her sentence has "met the inappropriateness standard of review." Anglemyer, 868 N.E.2d at 494.

Considering the nature of the offenses, we note that Pike brazenly broke and entered the Miller home while the family was present, stole keys that were inside, and then stole the family's van. He fled at a high speed when pursued by the van's owner and only stopped when cornered in a dead-end street, whereupon he fled on foot.

With regard to the character of the offender, Pike has a lengthy criminal history. According to the presentence investigation report, Pike has eleven prior convictions. Five of these were felony convictions, the most serious of which was a B felony conviction for robbery. Pike has been convicted of operating while intoxicated six different times. Notably, Pike has been found to have violated his probation a total of seven times and was on probation at the time he committed the instant offenses. This history demonstrates that Pike has not only failed to conform his behavior with the law, but he has also failed to take advantage of any leniency shown to him. Considering Pike's character and the nature of his offenses, and giving due consideration to the trial court's decision, we cannot say that the twelve-year sentence imposed by the trial court was inappropriate.

Conclusion

The trial court did not err in failing to consider as mitigating the various circumstances proffered by Pike, and the twelve-year sentence imposed by the trial court was not inappropriate under the facts and circumstances of the present case.

Affirmed.

MAY, J., and VAIDIK, J., concur.